IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2243 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD

Versus

BHAVARLAL SHRI RAM SHRIMALI

Appearance:

MR SHASHIKANT S GADE for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/04/2001

ORAL JUDGEMENT

Heard Mr. Shashikant Gade learned advocate for the appellant. Respondents are absent though duly served

by notice issued vide earlier order.

2. The appellant - National Insurance Co. Ltd. has filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 (for short "the Act") so as to challenge the award rendered by M.A.C.Tribunal (Aux.-I) Ahmedabad City dated 30.8.1991 in the proceedings of M.A.C.Petition No. 58 of 1989.

3. The respondent no.1 - Bhavarlal Sri Ram Shrimali filed M.A.C.Petition No. 58 of 1989 in the M.A.C.Tribunal (Aux.-I) Ahmedabad City against the present respondent nos. 2 and 3 claiming compensation of Rs. 50,000/- on account of bodily injuries sustained by respondent no.1 in vehicular accident occurred on 19.12.1988 around 7.45 p.m. near Ratiyavadi Char Rasta, Mirzapur, Ahmedabad. The respondent no.1 as claimant has averred and contended in a claim petition that when he was proceeding on a bicycle, the offending vehicle - Jeep Car bearing Registration No. GJW-406 came in full speed from his back side and after dashing with one scooterist, knocked down the claimant from his bicycle and whereby claimant sustained bodily injuries. That a criminal case was filed against the respondent no.2 who was the driver of the offending vehicle.

4. It may be noted that present respondent nos. 1 and 2 when served with summons of the claim petition, appeared before the Tribunal and filed written statement wherein facts were averred that present appellant National Insurance Company Ltd. is the insurer of the offending vehicle. On the said fact, the Tribunal had issued notice to the present appellant under Section 96 (2) of the Act vide Exh.16 and it was duly served as per endorsement made on notice Exh.17. It appears from the impugned judgement and award that despite due service, present appellant who was joined as party respondent no.3 in the claim petition, failed to appear and as such, construing the uncontroverted version of the insured in the written statement, the Tribunal passed the impugned judgement and award in favour of present respondent no.1 and against the appellant.

5. Mr. Shashikant Gade learned advocate appearing on behalf of appellant has contended that according to instruction of the appellant - Insurance Company, the Insurance Company has not been served with any notice in respect to proceedings of M.A.C.Petition No. 58 of 1989 conducted by M.A.C.Tribunal (Aux.-I) Ahmedabad City and as such, appellant had not prayed to contest the claim. It is further submitted as per instruction of Insurance

Company, no policy was issued in favour of respondent no.3 for the offending vehicle bearing Registration no. GJW-406 and in the absence of any policy, appellant as a Insurance Company cannot be held liable to pay the amount of award to present respondent no.1.

6. It may be noted that vide earlier order dated 16.10.2000 the R & P of M.A.C.Petition No. 58 of 1989 was called for from the Court of M.A.C.Tribunal (Aux.-I), Ahmedabad City and on verification of original record Exh.17, is the original notice served to present appellant wherein endorsement discloses that dispatch clerk of Appellant - National Insurance Co. has received the copy of notice on 21.1.1991 which is certified by bailiff on oath. In view of the said fact as apparent from the original record, contentions urged on behalf of appellant have no substance and as there is no substantial contentions against the award passed by the Tribunal in favour of respondent no.1, the appeal is not tenable at law.

7. On the basis of foregoing discussion, present appeal stands dispossed of as rejected summarily. However, in the facts and circumstances of the case particularly as respondents have not appeared, no order as to costs.

(A.K.Trivedi,J.)

(vipul)